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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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WASHINGTON, D.C. 20554

In the Matter of )  
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Petition of NewPath Holdings, Inc. ) CC Docket No. 00-50  
For an Expedited Declaratory Ruling on the )  
Scope of Unbundled Access to the )  
High-Frequency Portion of Loops )

**REPLY COMMENTS OF AT&T CORP.**

AT&T Corp., by its attorneys, hereby submits these Reply Comments in connection with the Petition for Declaratory Ruling ("Petition") filed by NewPath Holdings, Inc. ("NewPath") in the above-captioned proceeding.<sup>1/</sup>

In its Petition, NewPath seeks a declaration from the Commission that an incumbent local exchange carrier's (ILEC's) obligation to provide access to the high-frequency spectrum ("HFS") portion of a loop also applies when a competitor is reselling the ILEC's voice services. The competitive policy goals NewPath seeks to advance through its Petition are similar to those at stake in the Petitions for Clarification of the Line Sharing Order submitted by AT&T and MCI WorldCom. Those Petitions ask the Commission to make clear that competitive carriers utilizing the unbundled network platform (UNE-P) are entitled to non-discriminatory access to the loop functionalities and operational procedures utilized when an ILEC provides both voice and xDSL services itself or shares the line with a data LEC offering xDSL over the HFS portion of the loop bandwidth.<sup>2/</sup>

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<sup>1/</sup> In the Matter of Petition of NewPath Holdings, Inc. For an Expedited Declaratory Ruling on the Scope of Unbundled Access to the High-Frequency Portion of Loops, Petition for Expedited Declaratory Ruling of NewPath Holdings, Inc., March 14, 2000 ("NewPath Petition").

<sup>2/</sup> In the Matter of Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147, ("Line Sharing Proceeding"); Petition of AT&T Corp. for

While the Petition at issue in the instant proceeding involves a reseller, rather than a UNE-P CLEC, the objectives of both the NewPath and the AT&T/MCI WorldCom Petitions are the same: to promote competition and carry out the objectives of the Telecommunications Act of 1996 by preventing the ILECs from leveraging the growing demand for bundled voice and high-speed data services in order to stifle competition in both the voice and data markets.<sup>3/</sup>

As set forth in AT&T's initial comments, NewPath's request that the Commission declare that an ILEC may not preclude resellers from obtaining access to the HFS portion of a loop is fully consistent with both the Line Sharing Order itself,<sup>4/</sup> as well as the Commission's policy to promote multiple forms of competition via resale, competitor use of unbundled network elements (UNEs) and combinations of such elements, and full-fledged facilities-based competition.<sup>5/</sup> The comments submitted in the instant proceeding do not provide any convincing legal or policy support for ILEC policies and practices that preclude competitors from utilizing

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Expedited Clarification or, In the Alternative, for Reconsideration (February 9, 2000) ("AT&T Petition"); id., Petition for Clarification of MCI WorldCom (February 9, 2000).

<sup>3/</sup> While the NewPath and AT&T Petitions are fully consistent with the Line Sharing Order and seek to accomplish the same competitive policy objectives, the formal mechanisms by which the respective Petitions seek the relief requested therein differ to some extent. As AT&T has made clear to the Commission, UNE-P CLECs are entitled to access to the same loop functionalities and operational procedures utilized by an ILEC when it provides single-line voice and advanced data services, because their purchase of an unbundled platform that includes loops entitles them to "all of the unbundled network element's features, functions and capabilities," which includes the capabilities and features used to provide bundled voice and xDSL service over a single line. See 47 C.F.R. § 51.307(c); Line Sharing Proceeding, Reply of AT&T Corp. (April 5, 2000) at 3-4 ("AT&T Reply"). Likewise, an ILEC's failure to provide UNE-P CLECs with access to the same loop functionalities and operational procedures used to provide a single-line voice and advanced data service (either with its own data affiliate or in conjunction with a data CLEC), contravenes the Act's prohibition against discriminatory provisioning of loops and OSS. 47 U.S.C. § 251(c)(3); 47 U.S.C. § 201(b); AT&T Petition, supra n. 2, at 13-16.

<sup>4/</sup> Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Third Report and Order, 14 FCC Rcd 20912 (rel. Dec. 9, 1999) ("Line Sharing Order") at ¶ 33, 39-41, 56-59.

<sup>5/</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, ¶ 12 (1996) (subsequent history omitted).

the HFS portion of loops in order to take advantage of the same efficiencies inherent in providing voice and data over a single line that the ILECs themselves enjoy.

First, several ILECs continue to press the argument that the Line Sharing Order precludes them from furnishing access to the loop functionalities and operational procedures in instances in which an ILEC is not the provider of voice services.<sup>6/</sup> As AT&T and others have pointed out, however, the language of the Line Sharing Order relied upon by the ILECs only identifies the class of carriers -- the ILECs -- upon which a *mandatory* line-sharing obligation was imposed.<sup>7/</sup> The mandatory line-sharing obligation to which only the ILECs are subject is not, for example, imposed upon a competitive carrier that controls the loop through purchase of the unbundled network platform.<sup>8/</sup>

The ILECs have impermissibly sought to transform language that merely delineates the scope of the mandatory line-sharing obligation into language that purports to bar the provision of the loop functionalities and operational procedures necessary for competitors to utilize the HFS portion of a loop in all circumstances other than an instance in which the ILEC is providing retail voice services to end users. While it is obvious how such an interpretation would serve the ILECs' parochial interests, it is equally clear that Commission adoption of that interpretation

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<sup>6/</sup> SBC Comments at 2; GTE Comments at 4-5; Bell Atlantic Comments at 2-3.

<sup>7/</sup> See e.g., AT&T Reply, supra n. 3, at 2-3.

<sup>8/</sup> AT&T agrees with the Telecommunications Resellers Association (TRA) that only the ILECs are subject to a mandatory unbundling obligation, since "the Act limits the universe of carriers to which such unbundling requirements may be imposed to incumbent LECs." TRA Comments at 7. TRA's Petition raises concerns that the relief sought in the NewPath Petition may be construed as impermissibly extending the mandatory line-sharing obligation to voice-competitive resellers. TRA Comments at 4-7. Nonetheless, TRA supports the Petition's overall objectives by requesting that the Commission declare that "incumbent LECs may not refuse to provide, upon the request of the resale carrier, access to the high-frequency portion of loops utilized by that resale carrier," in order to ensure that resale customers have equal and nondiscriminatory access to advanced telecommunications services. TRA Comments at 10. TRA also supports the relief sought by AT&T and MCI WorldCom in their Petitions for Clarification. See Line Sharing Proceeding, TRA Comments at 11 (March 22, 2000).

would disserve both the public interest and competition by effectively cementing the ILECs' status as the only providers able to bundle voice and xDSL service over a single line.<sup>9/</sup>

Second, contrary to the views expressed by some ILECs, nothing in the Line Sharing Order stands for the proposition that a competitor's right of access to the HFS portion of a loop is limited solely to circumstances in which only two carriers are involved in use of a shared line, at least one of which is the ILEC.<sup>10/</sup> The Line Sharing Order does note that complexities and costs may increase if more than one carrier seeks to use the HFS portion of a shared loop, and therefore limits the right to obtain line sharing as a UNE to only a single, requesting data LEC (DLEC).<sup>11/</sup> The Order did not, however, conclude that line-sharing between a voice CLEC and a DLEC is more unduly burdensome or costly than ILEC/DLEC line-sharing. Indeed, some ILECs have acknowledged that line-sharing capabilities can be provided to a UNE-P voice CLEC utilizing the same functionalities and processes as the ILECs use when sharing the line with their own data affiliates.<sup>12/</sup>

Third, some ILECs contend that NewPath has failed to demonstrate that its ability to offer data services would be impaired without the relief sought in the Petition and that such relief would impermissibly blur the distinction between UNEs and resold services.<sup>13/</sup> In fact, the NewPath Petition shows that the "impairment" analysis set forth in the Line Sharing Order is equally apposite in instances in which a resale provider seeks to offer customers voice and data services over a single line.<sup>14/</sup> Likewise, to the extent that NewPath seeks only a non-discriminatory opportunity to offer a single-line bundle of voice and advanced data services

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<sup>9/</sup> See AT&T Comments at 5-8.

<sup>10/</sup> SBC Comments at 3; Bell Atlantic Comments at 3.

<sup>11/</sup> Line Sharing Order at ¶¶ 74-75.

<sup>12/</sup> See AT&T Initial Comments at n.14.

<sup>13/</sup> Bell Atlantic Comments at 3-4; US West Comments at 3-4.

<sup>14/</sup> NewPath Petition at 6-12. See also Sprint Comments at 1.

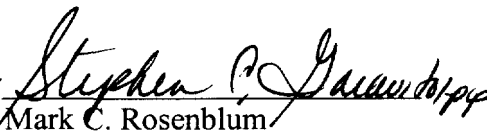
similar to that furnished by an ILEC (in conjunction with either its own data affiliate or a competing DLEC), the relief it requests presents no vexing issues regarding either feasibility of implementation or the distinction between resale and UNEs.

### CONCLUSION

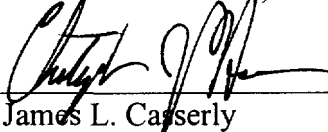
Both the NewPath Petition and the Petitions for Clarification submitted by AT&T and MCI WorldCom are designed to further the competitive objectives of both the 1996 Act and Line Sharing Order by ensuring that ILECs are not able to leverage the growing demand for xDSL service as a means to hinder new entrants seeking to compete in both the voice and data markets. AT&T urges the Commission to act swiftly and favorably on both the NewPath and the AT&T/MCI WorldCom Petitions.

Respectfully submitted,

AT&T CORP.

By   
Mark C. Rosenblum  
Stephen C. Garavito  
Teresa Marrero  
Room 1131M1  
295 N. Maple Avenue  
Basking Ridge, NJ 07920

MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY & POPEO, P.C.

By   
James L. Casserly  
Christopher J. Harvie  
James J. Valentino  
701 Pennsylvania Avenue, N.W., #900  
Washington, D.C. 20004  
(202) 434-7300

May 11, 2000

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## CERTIFICATE OF SERVICE

I, Patricia C. Prescott, hereby certify that on the 11<sup>th</sup> day of May, 2000, I caused copies of the foregoing "REPLY COMMENTS OF AT&T CORP. ON PETITION FOR DECLARATORY RULING OF NEWPATH HOLDINGS, INC., to be served by hand delivery (\*) or by first class mail on the following:

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Lawrence E. Strickling\*  
Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Suite 5-C450  
Washington, D.C. 20554

Robert C. Atkinson\*  
Deputy Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Suite 5-C356  
Washington, D.C. 20554

Michelle M. Carey\*  
Chief - Policy & Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C122  
Washington, D.C. 20554

Margaret Egler\*  
Assistant Chief,  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Suite 5-C100  
Washington, D.C. 20554

Linda Kinney\*  
Assistant Bureau Chief -  
Special Advisor for Advanced Services  
Common Carrier Bureau  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Staci Pies\*  
Common Carrier Bureau  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20036

Janice M. Myles\*  
Common Carrier Bureau  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Room 5-C327  
Washington, D.C. 20036

Jared Carlson\*  
Counsel to Bureau Chief  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-C434  
Washington, D.C. 20554

Lawrence R. Freedman  
Richard Davis  
Fleischman & Walsh, LLP  
1400 16<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20036

Robert B. McKenna  
US West Communications, Inc.  
1020 19<sup>th</sup> Street, N.W., Suite 700  
Washington, DC 20036

Jeffrey S. Linder  
Cheryl B. Carson  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006

Thomas R. Parker  
GTE Service Corporation  
600 Hidden Ridge, MS HQ-E03J43  
P.O. Box 152092  
Irving, TX 75015-2092

Charles C. Hunter  
Catherine M. Hannan  
Hunter Communications Law Group  
1620 I Street, N.W., Suite 701  
Washington, DC 20006

Norina T. Moy  
Sprint Corporation  
401 9<sup>th</sup> Street, N.W., Suite 400  
Washington, DC 20004

Donna M. Epps  
Bell Atlantic  
1320 North Courthouse Road, 8<sup>th</sup> Floor  
Arlington, VA 22201

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, N.W., 12<sup>th</sup> Floor  
Washington, DC 20036

Alfred G. Richter  
Roger K. Toppins  
Mark P. Royer  
SBC Communications, Inc.  
1401 I Street, N.W., 11<sup>th</sup> Floor  
Washington, DC 20005



Patricia C. Prescott